LEONARD J. OLHEISER

IBLA 87-51 Decided December 22, 1988

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, increasing the annual rental rate for noncompetitive oil and gas lease W 082077.

Affirmed.

1. Practice Before the Department: Persons Qualified to Practice--Rules of Practice: Appeals: Dismissal

   Practice before the Interior Board of Land Appeals is controlled by 43 CFR 1.3. An appeal brought by a person who does not fall within any of the categories of persons authorized to practice before the Department is subject to dismissal.

2. Administrative Procedure: Administrative Review--Rules of Practice: Appeals: Burden of Proof--Oil and Gas Leases: Burden of Proof--Oil and Gas Leases: Known Geologic Structure

   An appellant who does not show adequate reason for appeal and, as appropriate, support the allegation with argument or evidence showing error cannot be afforded favorable consideration. A party challenging a BLM determination that lands are within a KGS has the burden of establishing by a preponderance of the evidence that inclusion of the land is erroneous.

3. Oil and Gas Leases: Burden of Proof--Oil and Gas Leases: Known Geologic Structure

   Delineation of a KGS recognizes the existence of a continuous entrapping structure, on some part of which there is production, or of numerous related, but nevertheless independent, stratigraphic as well as structural traps. An appellant challenging a KGS determination must either show that the producing structure does not underlie the land or affirmatively establish that the land involved is not productive from the structure in question.

4. Administrative Procedure: Decisions--Oil and Gas Leases: Rentals

When the rental provision of the lease allows BLM to increase the rental rate upon notice that the leased land has been determined to be within a KGS, a decision by BLM to giving the lessee notice that the land has been included in a KGS is not contrary to the terms of the lease.

APPEARANCES: Ronald A. Baugh, Casper, Wyoming, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Leonard J. Olheiser has appealed a September 16, 1986, decision of the Wyoming State Office, Bureau of Land Management (BLM), increasing the annual rental for noncompetitive, nonproducing oil and gas lease W 082077 from $1 to $2 per acre through the fifth year of the lease and to $3 per acre for subsequent years. The basis for the decision was a determination that the lands held under the lease are within the Washakie Basin Known Geologic Structure (KGS). The lease is for 960 acres, consisting of sec. 22 and the N\ sec. 24, T. 17 N., R. 95 W., sixth principal meridian, Wyoming, and was issued to appellant with an effective date of January 1, 1983.

[1] Although we will address the geological issues concerning the correctness of BLM's decision, we find that the appeal is subject to dismissal because appellant's statement of reasons was not filed by a party qualified to practice before the Department. Practice before the Interior Board of Land Appeals is controlled by 43 CFR 1.3. In addition to representation by an attorney, an individual may practice before the Department in regard to a matter in which he represents, inter alia, himself, a family member, a partnership of which he is a member, and a corporation of which he is an officer or full-time employee. 43 CFR 1.3(b)(3). An appeal brought by a person who does not fall within any of the categories of persons authorized to practice before the Department is subject to dismissal. Robert G. Young, 87 IBLA 249 (1985); Ganawas Corp., 85 IBLA 250 (1985); Robert N. Caldwell, 79 IBLA 141 (1984).

Appellant signed the notice of appeal which was timely filed on October 7, 1986. The notice stated that "[o]ur reasons for appeal will be forthcoming within the thirty (30) day period." The statement of reasons filed on November 3, 1986, however, was not filed by appellant but by Ronald A. Baugh on his letterhead which indicates that he is a consulting geologist in Casper, Wyoming. Although the statement of reasons, like the notice of appeal, uses plural pronouns, nothing in the statement of reasons or the case file indicates that Baugh has a relationship to either the lease or lessee which would allow him to appear on behalf of the appellant. To the contrary, the lease was issued to Olheiser as an individual, and the

Part B form, by which he applied to obtain the lease, does not disclose any other parties in interest.

It is possible, of course, that facts not in the record would show that Baugh is entitled to appear in the case. However, we can only speculate as to what that relationship might be and must base our decision on the facts before us. An individual or business performing a service for a client is not qualified to appear before the Board on behalf of that client. Robert G. Young, supra at 250. Accordingly, we conclude that the statement of reasons was filed by a party not entitled to appear in the case and cannot be considered. 1/

[2] The consequence of disregarding the statement of reasons is that appellant has failed to present the Board with any reason for finding BLM's decision to be in error. An appellant who does not show adequate reason for appeal and, as appropriate, support the allegation with argument or evidence showing error cannot be afforded favorable consideration. Add-Ventures Ltd., 95 IBLA 44, 50 (1986). The law is settled that a party challenging a BLM determination that lands are within a KGS has the burden of establishing by a preponderance of the evidence that inclusion of the land is erroneous. Bender v. Clark, 744 F.2d 1424, 1429-30 (10th Cir. 1984); Carolyn J. McCutchin, 103 IBLA 1 (1988). Absent a showing of error, we must affirm BLM's decision.

Even if we were to review the appeal because on motion for reconsideration it was established that Baugh is qualified to practice before the Department, we would affirm BLM's decision.

[3] A KGS is defined as "technically the trap in which an accumulation of oil and gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive" 43 CFR 3100.0-5(l). Delineation of a KGS recognizes the existence of a continuous entrapping structure, on some part of which there is production, or of numerous related, but nevertheless independent, stratigraphic as well as structural traps. Thunderbird Oil Corp., 91 IBLA 195, 202 (1986), aff'd sub nom., Planet Corp. v. Hodel, Civ. No. 86-679 HB (D. N.M. May 6, 1987). An appellant challenging a KGS determination must either show that the producing structure does not underlie the land or affirmatively establish that the land involved is not productive from the structure in question. Id.

The Secretary of the Interior has delegated the responsibility for determining the existence and extent of KGS's to his technical experts in the field. When a technical expert makes a determination that lands qualify for inclusion in a KGS, the Secretary is entitled to rely upon their reasoned opinion. Thunderbird Oil Corp., supra at 202; Champlin Petroleum Co., 86 IBLA 37, 40 (1985).

1/ In such a case the proper procedure is for the named appellant to appear pro se and submit the work of the consultant as supporting documentation.

In regard to the KGS determination, the arguments presented in the statement of reasons are: (1) there is no mappable structure associated with the lease; (2) there is no production below the -4,000-foot Mesaverde datum from any well in the area of the lease; (3) there is no new information on which to base a reclassification because the last wells drilled in the area were drilled prior to the issuance of the lease; and (4) dry holes separate the closest producing well from the leased land and the production from that well is not economic.

Accompanying the answer filed by the Office of the Solicitor is a geological report prepared by BLM which responds to the points made in the statement of reasons as follows: (1) neither the Washakie Basin KGS nor the producing field to the northeast of the lease is controlled by a structure; (2) wells 3 miles to the west and 3 miles southwest of the lease both produced gas from the Mesaverde and both are below the -4,000-foot Mesaverde datum; (3) the KGS determination was an enlargement and consolidation of prior KGS areas based on a new interpretation of geological trends; and
(4) one of the dry holes was junked and abandoned due to mechanical problems, rather than a lack of reservoir sands, and a log analysis indicates significant deposits in the Ericson portion of the Mesaverde formation, while the other dry hole was not tested to determine whether it could produce. In reference to the producing well, BLM states that KGS determinations define the limit of the reservoir without regard to economics.

Examining the arguments of the parties and the materials each
has submitted, we reach the following conclusions. The KGS concerns a stratigraphic rather than structural trap. In previous cases we have acknowledged that KGS determinations based on stratigraphic findings are more problematic. See, e.g., Thunderbird Oil Corp., supra at 202. Appellant's argument, however, is not that BLM is mistaken in finding that the -4,000-foot Mesaverde datum underlies the leased land. Rather, the argu-ment is that BLM has no basis for including land below the -4,000-foot datum in the KGS because there has not been production below that level. BLM has refuted appellant's claim on this point. BLM has also pointed out that its determination was based on a new interpretation of geological trends shown by prior data rather than the new information appellant asserts is required to justify reclassifying the land. Appellant has not shown BLM's interpretation to be in error. Finally, BLM has pointed out that the dry holes which appellant claims intervene between his lease and the nearest produc-ing well do not necessarily show that his land cannot be presumptively productive as part of the KGS.

Reviewing the record as a whole, we conclude that, even considering the matters set forth in the statement of reasons, appellant has failed to show by a preponderance of the evidence that the lands he leases are not properly included within the KGS.

Appellant additionally argues that BLM's decision is an attempt to arbitrarily change the terms of the lease. Such is not the case. Section 2(d) of the lease provides for the payment of annual rental "at the following rates":

(a) If the lands are wholly outside the known geologic structure of a producing oil or gas field:

(i) For each lease year a rental of $1.00 per acre or fraction of an acre.

(ii) Beginning 6th year, $3 per acre or Fraction Thereof.

(b) If the lands are wholly or partly within the known geologic structure of a producing oil or gas field:

(i) Beginning with the first lease year after 30 days' notice that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the lands leased, $2 per acre or fraction of an acre.

These rental terms are consistent with the regulations which were in effect when the lease was issued. See 47 FR 2864 (Jan. 30, 1982).

[4] The rental provision of the lease allowed BLM to increase the rental rate upon notice that the leased land had been determined to be included within a KGS. 2/ BLM's decision now under appeal gave appellant such notice. The factual determination as to the inclusion of the land in the KGS could be challenged in the appeal to this Board. BLM's decision was not contrary to the terms of the lease and its decision notified appellant of his right to appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

Will A. Irwin
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

2/ We note that under the terms of the lease, and as stated in BLM's decision, the effect of the determination is to increase the annual rental from $1 per acre to $2 for only the fifth year of the lease. The record shows that appellant paid the annual rental for the 4 years prior to the date of BLM's decision. The lease provides for an increase of rental to $3 for the sixth and subsequent lease years. This rate is not affected by the decision on appeal.